

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JUSTIN PANUS; MATTHEW BAKER; §
SCOTT ZIRUS; TIMOTHY CONE; §
DANNIE CARTER; ERIC QUINONES; §
BENJAMIN GRISHAM; CORRY GARCIA; §
ZACHARY GUERRA; and JEFFREY §
JOHNSON, §

Individually and on behalf of all §
others similarly situated. §

PLAINTIFFS, §

V. §

PATRICK L. O'DANIEL; DERRELYNN §
PERRYMAN; LARRY D. MILES; §
E.F. MANO DeAYALA; MOLLY §
FRANCIS; FAITH JOHNSON; §
SICHAN SIV; ERIC NICHOLS; §
RODNEY BURROW; BRYAN COLLIER; §
BOBBY LUMPKIN; GARTH PARKER; §
JUSTIN TAYLOR; and CARLY KIM, §

Individually and in his or her §
official capacity. §

DEFENDANTS. §

A23 CA297 LY

CIVIL ACTION No. _____

ORIGINAL COMPLAINT

1. This is a civil action authorized by 42 U.S.C. 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The Court has jurisdiction under 28 U.S.C. 1331 and 1343(a)(3). The Plaintiffs seek declaratory relief under 28 U.S.C. 2201 and 2202. Plaintiffs claims for injunctive relief are authorized by 28 U.S.C. 2283 & 2284, and Rule 65 of the Federal Rules of Civil Procedure.
2. The Western District of Texas is an appropriate venue under 28 U.S.C. 1391(b)(2) because it is where the events giving rise to this claim occurred. Specifically it is where the Texas Board of Criminal Justice convene to create policy on behalf of all of the Texas Department of Criminal Justice.

II.
PLAINTIFFS

3. Plaintiff Justin Panus is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
4. Plaintiff Matthew Baker is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
5. Plaintiff Scott Zirus is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
6. Plaintiff Timothy Cone is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
7. Plaintiff Dannie Carter is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
8. Plaintiff Eric Quinones is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
9. Plaintiff Benjamin Grisham is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.

10. Plaintiff Corry Garcia is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
11. Plaintiff Zachary Guerra is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.
12. Plaintiff Jeffrey Johnson is and was at all times mentioned herein a prisoner of the State of Texas in the custody of the Texas Department of Criminal Justice. He is currently assigned to the French M. Robertson Unit, in Abilene, Texas.

III.
DEFENDANTS

13. Defendant Patrick L. O'Daniel is the Chairperson of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operation of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
14. Defendant Derrelynn Perryman is the Vice-Chairperson of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. She is also responsible, as a board member, for the oversight of the operation of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
15. Defendant Larry D. Miles is the secretary of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operation of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.

16. Defendant E.F. Mano DeAyala is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operations of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
17. Defendant Molly Francis is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. She is also responsible, as a board member, for the oversight of the operations of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
18. Defendant Faith Johnson is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. She is also responsible, as a board member, for the oversight of the operations of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
19. Defendant Sichan Siv is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operation of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
20. Defenant Eric Nichols is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operation of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.
21. Defendant Rodney Burrow is a member of the Texas Board of Criminal Justice and is legally responsible for the creation of policy for the Texas Department of Criminal Justice. He is also responsible, as a board member, for the oversight of the operations of TDCJ and for the welfare of all residents in the TDCJ. The TBCJ is located in Austin, Texas.

22. Defendant Bryan Collier is the Executive Director of the Texas Department of Criminal Justice. He is legally responsible for providing safe and appropriate confinement, supervision, rehabilitation and reintegration of TDCJ Residents, and to effectively manage or administer facilities based on Constitutional and statutory standards.
23. Defendant Bobby Lumpkin is the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice. He is legally responsible for providing safe and appropriate confinement, supervision, rehabilitation and reintegration of TDCJ Residents, and to effectively manage or administer facilities based on Constitutional and statutory standards.
24. Defendant Garth Parker is the Director of Laundry, Food and Supply Division for the Texas Department of Criminal Justice. He is legally responsible for providing wholesome and nutritious food for all TDCJ residents.
25. Defendant Justin Taylor is the Operations Manager of Laundry, Food and Supply Division for the Texas Department of Criminal Justice. He is legally responsible for providing wholesome and nutritious food for all TDCJ residents.
26. Defendant Carly Kim is the Senior Dietitian for the Texas Department of Criminal Justice. She is responsible for ensuring compliance with ACA and NCHC guidelines and applicable laws and court mandates.
27. Each Defendant is sued individually and in his or her official capacity. At all times mentioned in this Complaint, each Defendant acted under the color of State law.

IV.
FACTS

28. Incarcerated Residents of the Texas Department of Criminal Justice are HUMAN.
29. Because they are human, they are inherently susceptible to all limitations and ailments as all other humans - including the basic necessity of receiving regular well-balanced meals, containing sufficient calories and nutritional value to preserve health.

30. This lawsuit asserts that TDCJ Residents are being unconstitutionally deprived of adequate food and nutrition. This suit further asserts that this issue is systemic and effects all residents confined in the Texas Department of Criminal Justice.
31. The world is in a very precarious situation. The threat of climate change, incessant inflation, supply chain issues, food scarcity, staff shortages, and geo-political tensions all have the exasperating effect on compounding the inhumane conditions already within the Texas Department of Criminal Justice.
32. To add insult to injury, in 2022 Texas Governor Greg Abbott pulled \$840.1 Million out of the TDCJ budget to fund his 'Operation Lone Star' border security operation (January 2022 = \$426.9 Million; April 2022 = \$53.6 Million; October 2022 = \$359.6 Million).
33. Combined with the existing inflation, supply chain issues and global food scarcity, the "emergency" budget transfer is hitting the operation of TDCJ hard. With a prison population hovering around 132,000, the most immediate impact of these factors is felt with food.
34. Prison food has never been good - but in response to recent budget cuts and other socio-economic factors, Defendants have chosen to adopt a policy and practice of limiting the amount of food items distributed to each unit. This deliberate act has forced the administrations on those units to drastically water down the meals fed to TDCJ Residents in order to make the food stretch.
35. Meals such as stews, gravy, chilli, sloppy joe, and even pot pie are often about 50% water to stretch the food out.
36. Although the conditions may have been caused by exigent circumstances, the deliberate response to unconstitutionally deprive TDCJ Residents of adequate food is well within the ambit the Defendants control and the responsibility to provide wholesome and nutritional food is inherent in their positions and duty of care.

37. The amount and variety of food served to Residents has also been dramatically cut. This has resulted in Residents receiving caloric counts that are regularly between 1100-1600 calories per day.
38. These conditions have the very real possibility of becoming further exasperated if socio-economic factors increase, or TDCJ experiences further "emergency" budget cuts.
39. The food items that have been extremely rare or absent from the TDCJ diet since at least June 2022 are:
- * Rice
 - * Corn
 - * Green Leafy Vegetables
 - * Unprocessed Meat, Poultry or Fish
 - * Flour
 - * Noodles/Pasta
 - * Vegetables
 - * Potatoes
40. Under normal circumstances, the TDCJ diet is void of sufficient amounts of food items such as:
- * Citrus Fruits and Juices
 - * Probiotics
 - * Dairy Products
 - * Fresh Fruit and Vegetables
 - * Seeds and Nuts
 - * Whole Grains
41. As a result of this, the TDCJ diet is deficient in:
- * Calories
 - * Meat Protein
 - * Calcium
 - * Iron
 - * Magnesium
 - * Probiotics
 - * Vitamin D
 - * Vitamin C
 - * Zinc
42. A diet that is deficient in such deprives Plaintiffs and those similarly situated of the basic necessities of human existence. Exposure to such long-term dietary deficiencies poses a substantial threat to the health and well-being of Plaintiffs, and those similarly situated, and may result in premature death.

CALORIC DEFICIENCY

43. The USDA 'Dietary Guidelines for Americans, 2020-2025' (page 95) states:

Females ages 19 through 30 require about 1,800 to 2,400 calories a day. Males in this age group have higher calorie needs of about 2,400 to 3,000 a day. Calorie needs for adults 31 through 59 are generally lower, most females require about 1,600 to 2,200 calories a day and males require about 2,200 to 3,000 calories a day.

44. The TDCJ 'Correctional Managed Health Care Therapeutic Dietary Policy and Procedures Manual' requires that regular meals consist of between 2,400 and 2,700 calories.

45. However, regardless of the mandates of TDCJ policy and USDA guidelines, TDCJ Residents are receiving caloric counts that are regularly between 1,100 and 1,600 per day.

46. This level of caloric intake is insufficient to sustain a full-grown adult. Prolonged systemic practices of underfeeding will result in malnutrition, susceptibility to illness (including COVID) and demoralization (resulting in mental health issues).

47. An average hot meal for breakfast consists of:

3x 4" pancake with syrup	- 180 calories
4oz Oatmeal	- 90 calories
4oz Applesauce	- 70 calories
<u>TOTAL</u>	<u>- 340 calories</u>

48. An average hot meal for lunch/dinner consists of:

4oz beef gravy	
- 2oz gravy mix	- 5 calories
- 2oz ground beef	- 100 calories
4oz canned Carrots	- 20 calories
4oz Pinto Beans	- 160 calories
<u>TOTAL</u>	<u>- 285 calories</u>
2oz bologna/salami	- 140 calories
2 slices of white bread	- 140 calories
4oz canned Carrots	- 20 calories
4oz Pinto Beans	- 160 calories
<u>TOTAL</u>	<u>- 460 calories</u>

8oz Beef Stew	
- 4oz water	- 000 calories
- 2oz ground beef	- 100 calories
- 1oz canned Carrots	- 5 calories
- 1oz canned Green Beans	- 5 calories
4oz Pinto beans	- 160 calories
2 slices of white bread	- 140 calories
TOTAL	- 410 calories

SACKED MEALS

49. "Sacked Meals" (also known as "Johnnies") consist of a sandwich diet that are becoming increasingly used by TDCJ to substitute hot meals. Often the justification for this substitution of sacked meals instead of hot meals is staff shortages.
50. For example, in the month of January 2022 there were 23 out of 31 days where the Residents on the Robertson Unit were fed at least one sacked meal when the unit was not on any type of lockdown status. Out of a total of 93 meals that month, 42 of them were sacked meals.
51. These sacked meals do not meet the necessary calorie requirements and are void of nutritional value.
52. The following is what commonly constitutes a sacked meal:

BREAKFAST:

1 pancake sandwich	
- with 1oz peanut butter and jelly mix	- 249 calories
5 prunes	- 100 calories
TOTAL	- 349 calories

LUNCH/DINNER:

2 sandwiches	
- with 1oz peanut butter and jelly mix	- 269 calories
- with 2oz slice bologna	- 260 calories
TOTAL	- 529 calories

TOTAL DAILY CALORIES = 1,407 calories

53. Nowhere in the TDCJ FY20 Lockdown Menu created by Defendant Kim is there a single peanut butter and jelly sandwich. Yet, peanut butter and jelly sandwiches are given as a sack meal staple. The average sacked meal ALWAYS contains a peanut butter and jelly sandwich.

54. TDCJ counts one peanut butter and jelly sandwich as 580 calories. However, in actuality, it is only 269 calories. This is because each sandwich only has a one ounce mix of peanut butter and jelly ($\frac{1}{2}$ peanut butter and $\frac{1}{2}$ jelly) which equals 129 calories (peanut butter = 5.625 calories per gram; jelly = 2.5 calories per gram). The two slices of bread to make a sandwich adds an additional 140 calories. Using simple math, it is obvious that a peanut butter and jelly sandwich in TDCJ is only 269 calories. TDCJ over estimates such by 311 calories.
55. The reason for this miscalculation is that per policy a peanut butter and jelly sandwich is meant to contain 4oz of peanut butter and jelly. In reality, only 1oz is used - significantly lowering the calorie count.
56. In the interests of saving money, at times the ratio of jelly to peanut butter is doubled ($\frac{1}{3}$ peanut butter and $\frac{2}{3}$ jelly). Because jelly has less calories per gram, this again lowers the overall calorie count. When this is done, a peanut butter and jelly sandwich is only 243 calories.
57. The same kind of miscalculation can also effect the caloric content on a bologna sandwich (another staple). According to TDCJ, bologna is 60 calories per ounce. So the size of the slice of bologna determines how many calories are in a sandwich. TDCJ often claims that it uses a 4oz cut of bologna which would make the bologna sandwich 380 calories. In actuality, the slice of bologna is never more than 2oz (120 calories) - making the bologna sandwich only 260 calories. A miscalculation of 120 calories.
58. Such discrepancies over a bologna / peanut butter and jelly sandwich may at first seem trivial - however when a TDCJ Residents diet is consistently made up of insufficient sacked meals that barely reach 1,400 calories per day, it has a significant impact on their health. Such a diet is 800-1,600 calories short for a male aged 31-59 years and 1,000-1,600 calories short for a male aged 19-30 years. This is not trivial.

59. TDCJ policy also mandates that milk must be served at breakfast with the sacked meals. Milk may be made, but it is extremely rare that it is actually served to the Residents. The milk is also so watered down as to lose all taste and is an insufficient source of vitamins and minerals. This is true when milk is served during regular hot meals.

NUTRITIONAL DEFICIENCY

60. Not only are TDCJ Residents being systemically deprived of the necessary calorie count to sustain adequate health, but the food is also nutritionally deficient.

ABOUT VITAMINS AND MINERALS

61. Vitamins are organic substances that come from plants and animals. They are often called "essential" because there are only a few (such as vitamin D) that the body can synthesize on its own. That means it is essential that people get them from food.
62. Minerals are inorganic elements that come from rocks, soil, or water. They are obtained indirectly from plant foods that have taken them up from the soil or from animals that have eaten certain plants.
63. Both vitamins and minerals come in two forms. Vitamins can be water-soluble (which means that the body expels what it does not absorb) and fat-soluble (which means that leftover amounts are stored in fat cells).
64. Vitamin C, as well as the B-complex vitamins (1,2,3,5,6,7,8 and 12) are water-soluble. The fat-soluble vitamins are A, D, E, and K.
65. Minerals are classified as either major or trace. Major minerals are not necessarily more important than a trace mineral. A mineral is classified as major simply means that the body needs more of that particular mineral than it does a trace mineral.
66. Calcium is an example of a major mineral, whereas Copper is a trace mineral.

INSUFFICIENCIES / DEFICIENCIES OF VITAMINS AND MINERALS

67. When nutrients are scarce, the body will triage which nutrients are most important for survival to sustain physiological function and reproduction. The body will subsequently move away from the regulation and repair of cellular DNA and proteins that increase longevity. At that point, the stage is set for the development of chronic disease and accelerated aging, especially DNA breakage; which can lead to cancer. See, Ames, B.N. "Prolonged Healthy Aging: Longevity Vitamins and Proteins" Proc. Natl Acad Sci USA. 2018; 115 (43): 10836-44.
68. Insufficient amounts of vitamins A, C, and E; folate; niacin; vitamin B6; biotin; calcium; iron; magnesium; and zinc have been linked to DNA damage or chromosome breaks which can lead to significant problems. See, Ames, B.N. "Prevention of Mutation, Cancer, and other Age-Associated Diseases by Optimizing Micronutrient Intake" J. Nucleic Acids. 2010 Sept, 22; 2010.
69. Insufficiencies can lead to DNA damage and mitochondrial dysfunction. The mitochondria are organelles found in cells that help process nutrients from the cells and transform them into energy. Mitochondrial decay includes increased production of oxidants and oxidative damage to mitochondrial membranes and DNA, which has been observed with aging and contributes to age-related diseases. For example, an insufficiency of magnesium results in mitochondrial DNA damage. Most of the B vitamins, plus zinc, iron, and copper, are essential for heme synthesis in mitochondria, which in turn is essential for mitochondrial reaction that produce energy.

VITAMIN C

70. Vitamin C is a water-soluble vitamin that the body can not store, and thus excess is passed through the urine. Although the body can not create it, it is needed for the body to function properly. For these reasons, it is essential that a person consume sufficient levels of vitamin C on a daily basis.
71. Vitamin C is necessary to help fight infections, heal wounds, and stimulate the production of white blood cells - a vital component of the immune system. It is also a powerful antioxidant, reducing inflammation and fighting free radicals that can impair health and accelerate aging.

72. Vitamin C is involved in the production and synthesis of neurotransmitters, such as dopamine, norepinephrine, and tryptophan. It is also involved in cellular respiration, carbohydrate metabolism synthesis of lipids and proteins, breakdown of cholesterol to bile, conversion to active folate, and iron metabolism.
73. The most common symptom of low Vitamin C is fatigue. Deficiency in Vitamin C can also cause personality changes, such as depression, and decline in psychomotor performance resulting in reduced alertness and motivation. Some other symptoms include anemia, joint pain, easy bruising, poor immune functions, poor hair health, dry skin, decreased wound healing, loose teeth and swollen gums.
74. The recommended dietary allowance (RDA) of Vitamin C for adults older than 19 years of age is 90 milligrams (mg) for men and 75mg for women.
75. Vitamin C is found in foods such as citrus fruits and juices, strawberries, tomatoes, and raw cabbage.
76. On average, a TDCJ Resident receives 2 oranges a year (one on Thanksgiving and the other on Christmas). Residents receive no other fresh citrus fruits or juices - nor do they receive other foods as a sufficient level of Vitamin C on a daily basis.
77. The TDCJ diet is therefore deficient in Vitamin C on a daily basis.

CALCIUM

78. Calcium is a major mineral. It is required to build bone, muscle contraction, nerve signaling, blood clotting, blood pressure, cell-to-cell communication, and insulin and glucose signaling.
79. Calcium requires sufficient levels of magnesium and Vitamin D to be processed by the body. When calcium is consumed, Vitamin D is triggered to assist in bringing calcium into the blood. Without Vitamin D, calcium cannot be absorbed from food - which will result in unwanted calcium deposits.

80. Calcium also needs boron, strontium, manganese, phosphorus, silicum, and vitamin K to build bone.
81. Symptoms of calcium deficiency include increased risk of osteoporosis - a disease that can weaken the vertebrae in the spine.
82. The recommended dietary allowance (RDA) for Calcium for adults older than 19 years of age is 1,000 milligrams (mg) per day.
83. Calcium is acquired from eating leafy green vegetables and dairy products such as yogurt, milk and cheese. Other food containing calcium are tofu, almonds and legumes.
84. The only dairy products consumed by TDCJ Residents is the powdered milk served at breakfast time, or the sliced cheese which is only available as a "meat-free" option about 3 days a week (if it is available and the kitchen is not out of supply). The powdered milk is often watered down to the point it has no flavor and looks like foggy water. Leafy green vegetables such as "greens" have not been served since about July 2022 - and then not on a daily basis.
85. The TDCJ diet is therefore deficient in Calcium on a daily basis.

IRON

86. Iron is a major mineral. It is necessary for the body to reproduce red blood cells and perform cellular metabolism and aeribre respiration. It is also involved in the production of neurotransmitters, such as dopamine, norepinephrine, and serotonin.
87. The most common symptom of iron deficiency is fatigue. This occurs because the blood is not carrying oxygen to the cells. This means that the heart has to work harder to pump oxygen to the tissues. An insufficient amount of iron is commonly thought to be the primary cause of anemia.

88. Other common symptoms include cold hands and feet due to lack of circulation, dizziness, headaches, pale skin, dark circles under the eyes, and chest pains. More common (but less obvious) symptoms are brittle nails, swelling or soreness of the tongue, cracks in the sides of the mouth, frequent infections, restless leg syndrome, insomnia, numbness, and restless arms and body.
89. The recommended dietary allowance (RDA) for Iron in adults older than 19 years of age is 18 milligrams (mg) for women and 8mg for men.
90. Iron is found in foods such as meat, poultry, fish, legumes (which contain phytates) and green leafy vegetables. These are food items that are extremely rare, insufficient, or absent from the TDCJ diet.
91. Although isolated soy protein and beans may have a small percentage of iron, the phytates in the soy and beans inhibit the absorption of such.
92. The TDCJ diet is therefore deficient in iron on a daily basis.

ZINC

93. Zinc is an essential mineral with functions in the body that include wound healing, immune system function, building proteins and DNA, fertility in adults, and growth in young people. Zinc is also needed to maintain our sense of smell and taste.
94. Deficiency in Zinc leads to loss of senses of taste and smell, loss of appetite, reduced resistance to infection, growth retardation, and scaly skin. Without a sufficient level of Zinc, the body is unable to manufacture serotonin or melatonin.
95. The recommended dietary allowance (RDA) for Zinc in adults older than 19 years of age is 11mg for men and 8mg for women.
96. Animal products are the most bioavailable forms of Zinc. The best food sources of Zinc are oysters, beef, chicken leg, pork chops, squash, pumpkin seeds, lentils, yogurt, oatmeal, mushrooms. These are food items that are extremely

rare, insufficient, or absent from the TDCJ diet.

97. The TDCJ diet is therefore deficient in Zinc on a daily basis.

MAGNESIUM

98. Magnesium is a cofactor (or "helper") in more than 300 biochemical reactions in the body. It is required for energy metabolism, hormone binding, muscle contraction, cardiac excitation and neurotransmitter release. Magnesium also has a direct effect on an excitatory hormone release. This means that when the adrenal glands release norepinephrine and epinephrine, magnesium can actually calm that response.
99. Deficiency in Magnesium leads to an increase in sodium and a decrease in potassium, which affect hydration, muscle contractions, and energy production.
100. The recommended dietary allowance (RDA) for Magnesium in adults older than 19 years of age is 310-320mg for females and 400-420mg for men.
101. Magnesium is found in food items such as whole grains, legumes, and nuts. These are food items that are extremely rare, insufficient, or absent from the TDCJ diet.
102. The TDCJ diet is therefore deficient in Magnesium on a daily basis.

VITAMIN D

103. Vitamin D is a fat-soluble vitamin that promotes calcium absorption and helps maintain the body's calcium and phosphate levels, which are needed to build bones. Vitamin D also helps to reduce inflammation and modulates cell growth, glucose metabolism, and immune function.
104. When Calcium is consumed, Vitamin D is triggered to assist in bringing calcium into the blood. Without Vitamin D, the body cannot absorb the calcium from food, which will result in unwanted calcium deposits.
105. Low levels of Vitamin D have been linked to cancer, bone health, poor mood, dementia, sleep, autoimmune conditions, and increased osteoporosis and osteomalacia risk.

106. The recommended dietary allowance (RDA) for Vitamin D in adults older than 19 years of age is 20mcg (micrograms) / 600 IU.
107. Vitamin D is primarily synthesized in the skin from sunlight, but it has to be further changed into its active form by the liver and kidneys. This means that levels of vitamin D are dependent on more than just sunshine exposure (which prisoners very seldom receive - especially in light of the TDCJ staffing crisis and their subsequent inability to run regular outside recreation for every prisoner).
108. Vitamin D is acquired by eating sardines, salmon, cheddar cheese, cod liver oil, pork chops, eggs, mushrooms, and fortified milk. These food items are extremely rare, insufficient or absent from the TDCJ diet.
109. The TDCJ diet is therefore deficient in Vitamin D on a daily basis.

PROBIOTICS

110. Probiotics are biotransform nutrients that fight toxins and pathogens in the body. They are considered "good" bacterium necessary to health. Key probiotic mechanisms include: binding, degradation, and inhibition of mutagen (an agent that changes genetic material); procarcinogen prevention and conversion of harmful, toxic, and highly reactive carcinogens; gut pH lowering by short-chain fatty acids formed during degradation of nondigestible carbohydrates; and hosts innate immunity modulation and enhancement through secretion of anti-inflammatory molecules. Probiotics affect mood and body weight, and appear to prevent cancer and tumor progression.
111. Foods that provide probiotics naturally include: sauerkraut, cottage cheese, yogurt, pickles, olives, sourdough bread, dark chocolate, kimchi, miso, kombucha and kefir.
112. These are food items that are extremely rare, insufficient or absent from the TDCJ diet.
113. The TDCJ diet is therefore deficient in probiotics on a daily basis.

LACK OF MEAT PROTEIN vs ISOLATED SOY PROTEIN

114. TDCJ produces its own processed "meat" to feed Residents. TDCJ uses isolated soy protein as a filler to stretch this processed "meat" and to make Residents feel full (and thus eat less).
115. This TDCJ processed "meat" also contains organs (such as artery and other entrails), bones (including teeth), and other body parts. Plaintiffs assert that such is not fit for human consumption.
116. Isolated soy protein is on the most highly processed end of the soy spectrum. It is made from defatted soybean flakes that have been washed in either alcohol or water to remove the sugars and fiber. It is then dehydrated and powdered.
117. Soy contains phytates - which are plant compounds often categorized as antinutrients. Antinutrients reduce the availability of minerals like calcium, iron, and zinc. This is especially so if a diet is severely imbalanced (such as TDCJ Residents) and soy protein is the main source of iron and zinc.
118. Phytoestrogens are compounds that occur naturally in plants - notably soy. They have estrogen-like properties that bind to estrogen receptors in the body. As such, soy may promote breast cancer or effect male reproductive hormones and severely disrupt natural hormone levels in the body.
119. Therefore, the high level of soy feed to TDCJ Residents severely compounds the harm caused by deficient nutrients by reducing the availability of minerals, and disrupts natural hormone levels.

STRESS AND ITS EFFECTS ON NUTRITION

120. Without debate, prison is inherently a high stress environment. The argument can be made that it is deliberately designed that way. A lot of TDCJ Residents develop symptoms of PTSD, anxiety, depression and institutionalization.
121. The adrenal glands are responsible for keeping oneself alive and prompting shifts in biochemistry to ensure survival. When someone is continuously put under undue stress, the adrenal glands will inevitably facilitate a

permanent biochemical change, resulting in the development of chronic disease through the continuous release of Cortisol.

122. Cortisol is a hormone released from the adrenal glands during times of stress, and has a significant impact on how the body converts fats, proteins, and carbohydrates into energy. It also regulates blood pressure and cardiovascular function. Its main job, however, is to regulate the sleep-wake cycle.
123. Nutritionally, the adrenal glands use Vitamin C, B5, B6, and B12, plus a variety of minerals to maintain balance and adapt to the situation at hand. Prolonged stress (like that caused by the inherent dangers of incarceration) will however cause adrenal fatigue and in those people who have a poor nutritional foundation (like TDCJ Residents), the necessary nutrients are not available and the body is unable to replenish what it is using and the body will have increasingly troublesome symptoms such as a rise in the baseline blood sugars, insulin, and blood pressure, or (most commonly) change in sleep cycles (usually because of elevated cortisol levels). When the sleep cycles are disrupted in this way, the body does not regenerate during the night and has used up most of the nutritional resources.
124. This poor nutritional foundation and disrupted sleep cycle also affects the production of Melatonin and Serotonin. The secretion of melatonin is affected by numerous biochemical pathways, and therefore a full neuroendocrine workup would be indicated if melatonin levels were low. Melatonin is manufactured from the amino acid Tryptophan, which is converted into serotonin with the aid of zinc, vitamin C, vitamin B6, and magnesium. From there, serotonin is converted into melatonin with the help of the same cofactors, plus B5.
125. Without adequate levels of serotonin, melatonin cannot be made. Without adequate levels of vitamin C, B6, and B5, plus zinc and magnesium, the body cannot make either serotonin or melatonin.
126. Ironically, when the adrenal gland is stimulated in response to stress, it uses these same vitamins (C, B6, B5, and B12) to assist in response. This pulls these nutrients from other pathways.

127. This perpetual cycle of adrenal fatigue and poor nutrition compounds itself and caused more stress. This causes the body to continuously release cortisol. And the cycle continues until there is sufficient nutrients to break the cycle. The body is essentially in self-destruct mode.
128. Therefore, in order for the body to replenish the release of cortisol in response to the high stress environment of prison, a TDCJ Resident must have an adequate nutritional foundation. If not, it will set off a perpetual cycle that depletes the available nutrients and creates more cortisol in response. This, as explained above, prevents the body from regeneration during sleep, and results in a myriad of health problems.
129. Because prison is a high stress environment, TDCJ Residents should be receiving an above average intake of nutrients since a significant amount of such will be used to replenish the cortisol response.
130. However, this is not the case. Not only do TDCJ Residents receive deficient calories and nutrients which creates the adrenal fatigue cycle, but the TDCJ diet contains significant amounts of isolated soy protein and beans that contain phytates which inhibit the body's ability to absorb and make use of minerals like calcium, iron, and zinc. As explained above, zinc is an essential mineral necessary for the creation of melatonin and serotonin.
131. Plaintiffs highlight the correlation between the quality of food going down, and the rate of suicides in TDCJ going up.

INSULIN RESISTANCE

132. Such chronic elevation of cortisol can lead to increased activation of inflammatory cytokines and promote insulin resistance.
133. Insulin is a protein pancreatic hormone secreted by the beta cells of the islets of Langerhans that is essential for metabolism of carbohydrates and the regulation of glucose levels in the blood.
134. Insulin resistance is the reduced sensitivity to insulin and is often a sign of prediabetes. Insulin resistance is also influenced by poor sleep,

low vitamin D, high lipoproteins, chronic infections, hypertension, gut dysbiosis, poor diet, and a sedentary lifestyle.

135. Insulin resistance is responsible for the distribution of fat around the abdomen. This fat is known as visceral fat - which is a leading contributor in cardiovascular disease and heart disease (the number one cause of death in Americans).
136. Contrary to common belief, this distribution of fat is not always caused by the over consumption of calories, but by the body's natural survival reaction to high stress. The body interprets these prolonged levels of high stress as a sign to shift biochemistry and store fat in order to assist the body with more energy reserves in the event it must draw upon such to ensure survival.
137. Insulin resistance and chronic elevation of cortisol explains why most TDCJ Residents have developed fat around their abdomens despite lack of adequate caloric and nutritional intake.

DIET FOR HEALTH

138. "Diet For Health" (DFH) are medically prescribed diets for the following conditions:

- * Diabetes (insulin and non-insulin dependent)
- * Hyperlipidemia
- * Hypertension
- * Morbid Obesity

139. Pursuant to the 'Correctional Managed Health Care Therapeutic Dietary Policy and Procedures Manual' the requirements of DFH are:
 - a. Shall be approximately 1,900-2,100 calories per day.
 - b. The DFH menu is a mandatory menu and must be prepared exactly as written
 - c. Portions must be followed exactly, meat items must be weighted, fruits and vegetables must be served with the correct utensil size.
 - d. In the event of product unavailability, appropriate substitutions based on the DFH menu plan may be made and shall be noted on the Cook's Worksheet.

- e. At the breakfast meal, one four (4) ounce portion of different canned fruits, or one two (2) ounce portion of a single dried fruit, and at supper one four (4) ounce portion of different canned fruit shall be served.
- f. The DFH is a medical diet order and overrides all other menu plans.

140. DFH has a different and separate sack meal menu plan than the general population sack meal menu.

141. Plaintiffs Panus, Carter, Garcia, Johnson, ~~XXXXX~~, Grisham and Quinones, are on the medically prescribed diet (DFH). They assert that this diet is not always adhered to and that they are regularly fed the same food as general population. This has become increasingly so since COVID and the food scarcity problem arose. More often than not, DFH is not provided when sack meals are served. If they are made at all, they are either left at the searchers desk or stolen by offenders who are tasked with handing out sacked meals instead of the officers (this has become the normal practice since the staff shortage problems).

142. DFH Residents are experiencing the same caloric deficiencies and nutritional insufficiencies as general population.

143. Not receiving the correct medically prescribed diet poses a substantial risk to the health & well-being of DFH Residents.

FALSIFICATION OF RECORDS

144. Upon information and belief, Plaintiffs assert that there is a systemic culture or practice within TDCJ to fabricate or falsify documentation regarding the actual feeding practices in TDCJ in order to cover up these deprivations. This is evident by the obvious disconnect between what is documented and what is actually fed to TDCJ Residents.

TIME TO EAT

145. TDCJ Policy provides that a Resident has 20 minutes to eat their meal in the dining hall. This 20 minute period begins the moment the Resident enters the dining hall.

146. There is a systemic culture or practice within TDCJ that disregards this policy and TDCJ staff severely limit the time Residents are in the dining hall before they are ordered to leave.
147. Upon information and belief, Plaintiffs assert that the average time spent in the dining hall is 8 minutes and 51 second, and that the actual eating time averages 5 minutes and 30 seconds.
148. It is extremely rare that a Resident is able to finish an entire meal before TDCJ staff order the Resident to throw away what food they have left and leave. The result is an incredible amount of wasted food and Residents are denied the ability to eat what little they are actually given.
149. Residents are also forced to eat as fast as possible, which means less chewing of food takes place. This results in large amounts of unchewed food which is much more difficult for the digestive system to breakdown. This equates to fewer nutrients being absorbed by the body.
150. Thus TDCJ Residents are denied their required caloric intake and this is compounded because they are force feeding themselves to get enough food in the short amount of time they are given.
151. It is dangerous to Plaintiffs health to consume as much food as possible in only 5:30 minutes.
152. Upon information and belief, this practice is systemic throughout TDCJ.

UNSANITARY CONDITIONS

153. Mice and roaches infest the unit kitchen and dining halls. Mice can be seen throughout the kitchen and eating areas. Roaches infest the kitchen and can often be seen on the food in the serving line.
154. Sack meals have had dead/alive roaches within its contents and bags sometimes have bitemarks on them.

155. Trays, cups, and utensils are often covered with food and grease, while trays have deep gouges and scratches that harbour bacteria.
156. Our beverages are cross-contaminated with trash as the kitchen puts trash into the large barrels that are used to store/serve beverages.
157. Serving temperatures are warm to cold, particularly with sacked meals and staff/prisoners do not wear proper PPE gear when preparing or serving food.
158. Upon information and belief, these conditions are systemic throughout TDCJ.
159. DFH trays are sometimes prepared separate from the food being served to general population and are left in the open to the elements (flies, roaches, airborne contaminants) and are exposed to unregulated temperatures.
160. Throughout various TDCJ unit Residents have contracted H. Pylori. Plaintiff Johnson has been diagnosed with H. Pylori and as of this filing still has the infection.

CONTAMINATED WATER

161. Upon information and belief, Plaintiffs assert that there is a systemic issue of contaminated drinking water throughout TDCJ.
162. It is a recorded fact that the Honorable Judge Ellison of the Southern District of Texas, Houston Division, ordered TDCJ to truck in safe drinking water for Residents at the Wallace Pack Unit after tests showed the water contained between 2.5 to 4.5 times the level of arsenic permitted by the Environmental Protection Agency (EPA).
163. Residents of the Eastham Unit filed federal complaints in the Eastern District of Texas arguing that their drinking water contained copious amounts of lead and copper. Eastham lawsuit's plaintiff, William Wells, contracted H. Pylori from the drinking water.
164. On the Robertson Unit, for example, Plaintiffs assert that the drinking water periodically emits a pungent odour; can be foggy or discolored; can have an unnatural taste; and can contain foreign particles.

165. Similar reports have been made by Residents on other TDCJ units and thus Plaintiffs have reason to believe that contaminated drinking water may be a systemic issue.

FOOD CONDITIONS ARE SYSTEMIC

166. Plaintiffs assert that the food conditions described in this Complaint are not isolated but systemic throughout all TDCJ units. Plaintiffs aver that this will be clearly established through the Discover Process.

167. The systemic nature of these food conditions are evident from reports collected by prisoner advocate organization Trans Pride Initiative. Such reports include, but are not limited to, the following, and show that these issues are not isolated:

- a. Hot Meals and Sack Meals Lacking Calories and Nutrition on Clements Unit (Incident No. 2022-00322; 2022-00396), Daniel Unit (2021-0050), Eastham Unit (2021-00058), Ellis Unit (2020-00237), Formby Unit (2020-00500), Hughes Unit (2022-00417; 2022-00355), LeBlanc Unit (2020-00303), Lewis Unit (2020-00809), Michael Unit (2021-00235; 2021-00257), Montford Unit (2020-00904), Polunsky Unit (2022-00041), Robertson Unit (2020-00909; 2022-00457), Smith Unit (2020-00311; 2020-00426), Stiles Unit (2022-00425; 2022-00603; 2022-00641), Telford Unit (2022-00202), and Young Unit (2020-00340).
- b. Unsanitary Conditions including utensils and trays being insufficiently sanitized on Holliday Unit (2020-00831), McConnell Unit (2016-00372), Michael Unit (2017-00416), Murray Unit (2021-00370), Skyview Unit (2022-00576), and Telford Unit (2021-00621).
- c. Food Contaminated by allergens or denial of medically prescribed diets on Clements Unit (2021-00354; 2021-00363), Connally Unit (2021-00133; 2021-00618), Estelle Unit (2021-00307; 2021-00598), Hughes Unit (2021-00382), Polunsky Unit (2021-00178).

V.
EXHAUSTION

168. Plaintiffs have fully exhausted all claims presented in this suit through the Offender Grievance Process. The following are the grievance numbers for such:

169. Plaintiff Justin Panus:

2023009744	2022053814	2022025083	2022019625	2021106126
2022009259	2022038474	2021100218	2021089788	2021077856
2021059867	2021141104	2021012888	2021002829	2021150488
2021154155	2021116787	2020153698		

170. Plaintiff Scott Zirus:

2022132792	2022001517	2021119332	2021154706	2023036835
2020137864	2022016166			

171. Plaintiff Eric Quinones:

2020136299	2020115945	2022066157	2022063608	2022060715
2022132799				

172. Plaintiff Timothy Cone:

2022066191	2022142328	2021113376	2022063610	2022060717
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173. Plaintiff Dannie Carter:

2022136340	2022060722	2023036833
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174. Plaintiff Benjamin Grisham:

2022058339

175. Plaintiff Matthew Baker:

2022057581

176. Plaintiff Zachary Guerra:

2023036853

177. Plaintiff Corry Garcia:

2023036862	2022070957
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178. Plaintiff Jeffrey Johnson:

2023074125

VI.
LEGAL CLAIMS

179. The deprivation of adequate food of wholesome and nutritional value violates the Plaintiffs, and all those similarly situated, rights against cruel and and unusual punishment under the Eighth Amendment to the United States Constitution.
180. Adequate food is one of the basic necessities of life and deprivation of such for any substantial period of time violates the Eighth Amendment. Deprivation of adequate food poses an unreasonable risk of serious damage to a persons future health and may cause lasting or permanent harm - possibly resulting in death.
181. The inadequate food conditions within the TDCJ constitute unquestioned and serious deprivation of a basic human need and of the minimal civilized measure of lifes necessities. Such a deprivation is so grave as to offend the evolving contemporary standards of decency that mark the progress of a maturing society.
182. The conditions and risk posed by the inadequate food conditions within TDCJ are so obvious that it computes actual knowledge to Defendants of the fact that such conditions are objectively cruel and inhumane in that they pose an excessive risk to inmate health and safety.
183. Defendants are directly responsible for the policy and practices that are causing the complained of deprivation of adequate food of wholesome and nutritional value.
184. Defendants have exhibited deliberate indifference to the inadequate food conditions by failing to take reasonable measures to abate it and knowingly acquiescing in the unconstitutional practices as well as violating their duty to inquire about such practices and their responsibility for preventing it.
185. The unconstitutional conditions described herein are systemic throughout all of TDCJ - thus warranting certification as a Class Action.

186. The Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described herein. Plaintiffs have been and will continue to be irreparably injured by the conduct of the Defendants unless this Court grants the declaratory and injunctive relief which Plaintiffs seek.

VII.
PRAYER FOR RELIEF

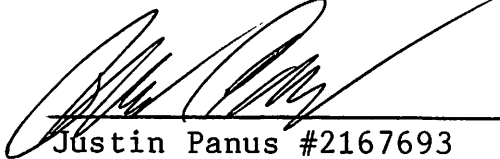
WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment:

187. Certify this matter as a CLASS ACTION representing all TDCJ Residents confined within the TDCJ pursuant to Rule 23(a) and (b)(1)(B) or (b)(2) of the Federal Rules of Civil Procedure.
188. Grant Plaintiffs a DECLARATION that the acts and omissions described herein violate their rights under the Constitution and laws of the United States.
189. Remedy ongoing violation of the law and the Constitution by granting a preliminary and permanent INJUNCTION to enjoin Defendants, their agents, employees, successors in office and assigns, to abate the risk of serious harm described herein by providing three WHOLESOME AND NUTRITIONAL MEALS per day of ADEQUATE CALORIC QUANTITY to all residents confined within the TDCJ.
190. Issue a preliminary and permanent INJUNCTION ordering Defendants, their agents, employees, successors in office and assigns, to take action to end the practices of:
- * Watering down food to increase volume
 - * Not affording adequate time to eat meals
 - * Use of sacked meals as substitute for hot meals when unit is not on lockdown
 - * Food prepared in an unsanitary manner without masks or gloves
 - * Failure to ensure food is kept at proper and safe temperature
 - * Utensils and trays are insufficiently cleaned and sanitized
 - * Failure to ensure that pests and vermin are separated from food
 - * Failure to meet their obligation to provide sufficient water that is fit to drink

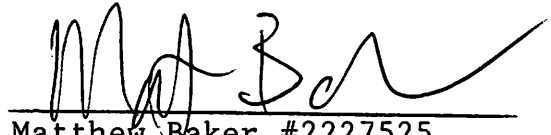
- * Failure to provide food that is not spoiled or contaminated
- * Failure to accommodate special diets required by medical reasons

191. Direct Defendants to develop and submit to this Court a PLAN that will ensure that Plaintiffs, and the Class, are not subjected to such conditions in the future.
192. RETAIN JURISDICTION over this matter or appoint oversight to an independent third party until implementation of this Court's decree has been completed.
193. Issue a RESTRAINING ORDER prohibiting Defendants, or their agents or employees, from any form of retaliation, including the transfer of named Plaintiffs to any other unit during the course of this action without just cause and prior notice to this Court (such is often designed to disrupt litigation).
194. Order an AUDIT by a third party of the records at all TDCJ facilities concerning the purchase, transportation, preparation, and distribution of food.
195. Order TESTING by a third party of water at all TDCJ facilities concerning the presence of heavy metals and other contaminants in the drinking water.
196. Order TESTING by a third part of the "meat" produced by TDCJ (or TCI) to determine level of isolated soy protein, the meats actual contents (including possible contaminants) and nutritional value.
197. In the event that conditions cannot be timely and/or adequately remedied, for this Court to issue a PRISONER RELEASE ORDER to reduce or limit the prison population to a level that Defendants can provide constitutional conditions.
198. Award Plaintiffs reasonable ATTORNEY FEES and costs of this action pursuant to 42 U.S.C. 1988.
199. Plaintiffs seek a JURY TRIAL on all issues triable by jury.
200. Award such other and further relief as this Court may deem necessary.

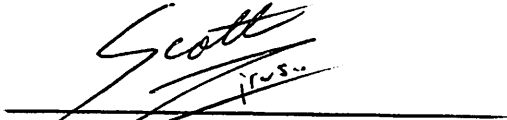
Respectfully Submitted,



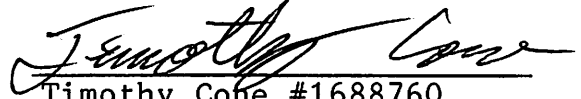
Justin Panus #2167693
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Matthew Baker #2227525
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Scott Zirus #1640002
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Timothy Cone #1688760
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Dannie Carter #2013581
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



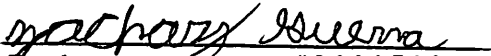
Eric Quinones #2097677
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



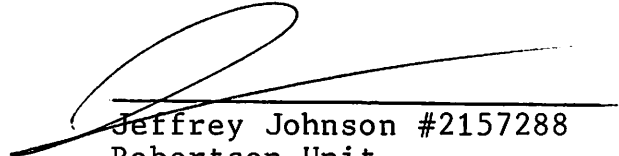
Benjamin Grisham #2163986
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Corry Garcia #2365886
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



Zachary Guerra #2328599
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601



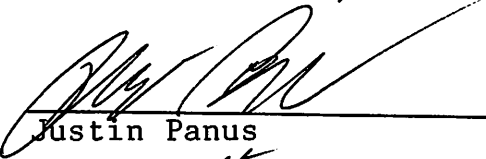
Jeffrey Johnson #2157288
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601

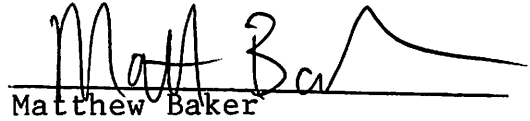
DATE: 11th March 2023

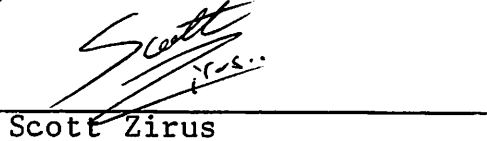
VERIFICATION

I have read the foregoing Complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED at Abilene, Texas on this the 11th day of March, 2023.


Justin Panus


Matthew Baker


Scott Zirus



Timothy Cone

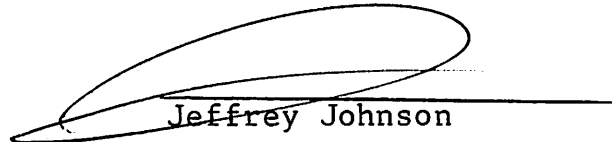

Dannie Carter


Eric Quinones


Benjamin Grisham


Corry Garcia


Zachary Guerra


Jeffrey Johnson